

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
<b>HOPKINS HOSPITALITY INVESTORS, LLC</b>	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 09-002V

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### **DECISION AND ORDER**

On March 23, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Hopkins Hospitality Investors, LLC, for variances to: (1) reduce the 30-foot setback from all other zoning districts to 10 feet for a retaining wall, parking spaces, trash receptacle, and storage building, and (2) to reduce the 30-foot setback from all other zoning districts 6 feet for parking spaces in a PEC (Planned Employment Center) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas Meachum, Esquire, represented the property owner. Robert Vogel testified on behalf of the Petitioner. No one appeared in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is situated on the west side of Montpelier Road about 260 feet north of Johns Hopkins Road. It is located in the 5<sup>th</sup> Election District and is identified on Tax Map 41,

Grid 17, as Parcel 125, Lots D-3 and D-4, and is also known as 7521-7551 Montpelier Road (the "Property").

2. The 3.197-acre Property is irregularly shaped. Its frontage curves along Montpelier Road, causing the Property to have a variable depth, and its westerly 386-foot rear lot line is wider than the front lot line. The Property is unimproved and predominately open with an area of evergreen trees situated near the south lot line. From a high point near the southeast corner, the Property slopes moderately to the lower ground on the north side, and more steeply to the abutting property on the west side.

3. Vicinal Properties include the PEC-zoned Parcel D-1 to the north, the site of a child day care facility. To the south is the B-2 zoned Parcel 356, which is improved by a bank and a commercial communications monopole and facility. To the west is the PEC-zoned Parcel 123, which is part of The Johns Hopkins University Applied Physics Laboratory (the "APL Site"). To the east, across Montpelier Road, are a retail shopping center and further east, a large three-story office building.

4. Roads. Montpelier Road has two northbound and two southbound travel lanes, a center turn lane, and a variable paving width within a variable right-of-way. The posted speed limit is 30 miles per hour. The estimated sight distance from the approximate location of the proposed driveway is more than 800 feet to the northeast and about 260 feet south. There is no traffic volume data for Montpelier Road.

5. Water and Sewer Service. The Property is served by public water and sewer.

6. The General Plan. The General Plan's 2000-2020 Policies Map designates the Property as "Employment Areas." Montpelier Road is depicted as a Minor Collector on the Plan's Transportation Map.

7. The Petitioner proposes to develop the Property with a Hilton-branded extended stay hotel and restaurant facility. The hotel would have 114 guest rooms in a six-story building, which would also include a 6,336- square foot restaurant. The bulk of the parking spaces would be situated to the building's east (front), south, and west (rear) sides, with a few additional spaces on the north side. The 46 spaces on the rear side would abut a retaining wall. Because the retaining wall, parking spaces, trash receptacle enclosure and storage building would be sited 20 feet into the 30-foot structure and use setback required by Section 116.D.3.b(2) of the Zoning Regulations, the Petitioner is seeking a variance to reduce the setback to 10 feet. Because the 19 parking spaces proposed on the Property's south side would encroach 24 feet into the 30-foot setback from the abutting B-2 District, the Petitioner is also seeking a variance to reduce this setback to 6 feet.

8. In 2006 the Hearing Examiner approved a variance in BA Case No. 06-045V to reduce the required 30-foot setback to 10 feet for a retaining wall, parking spaces, and trash dumpster, and to reduce the 30-foot side setback to 15 feet for parking spaces and a storage building on the Property's south side. The same variance request was approved in 2003 in BA Case No. 02-63V. Both variances approved in relation to the proposed hotel have lapsed.

9. Robert Vogel, the project engineer, testified that the proposed hotel is smaller than Hilton's Homewood Suites' prototype as an accommodation to the parcel's size.

10. The landscaping along the retaining wall would comply with that proposed in the December 18, 2006 letter from Raissa Kirk, General Counsel to the APL, from Thomas Meachum. In response to questioning, Mr. Vogel stated that the Petitioner would comply with the three conditions imposed in BA 06-045V.

### CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
- (2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.
- (3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.
- (4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4) and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property is irregularly shaped, small, and shallower than vicinal lots. Additionally, the western slope necessitates the construction of a retaining wall. This combination of irregular shape, shallowness, relatively small size, and slope are unique physical conditions causing the Petitioner practical difficulties in complying with the two 30-foot structure setback requirements, in accordance with Section 130.B.2.a(1).

2. The Petitioner’s proposed use of the area within the setbacks is a permitted use commonly found in the zoning district. The principal building will comply with the structure setback requirements and the parking area in the front will also comply. Consequently, the most prominent and visible features of the development will meet the setback requirements. The greatest area of encroachment, along the western rear lot line, will be screened from the road by

the building itself and the encroaching parking spaces. The trash enclosure and storage building will not be conspicuous from the road or the front of the Property.

The rear encroachments will be adjacent to a wide, vegetated buffer on the APL site, which separates the Property's parking area from a similar parking use, and it is unlikely that further development on the APL site will reduce this buffer. Additionally, the elevation of the parking lot on the APL Site is 20± feet below the proposed parking space on the Property. As a result, and considering the proposed landscaping, the encroaching features will not be readily visible from the APL site.

The proposed encroachment along the south lot line will also be inconspicuous because the area adjoins a landscape buffer on the bank's site and the combined landscaping will screen the encroaching features sufficiently. I therefore conclude the granting of the variances will not alter the essential character of the neighborhood or district in which the Property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The Property's size, shape, and shallowness were created by the owner of the original Montpelier subdivision, which established the road location, and with a later resubdivision, and were not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. Although the encroachment into the western setback could be reduced by balancing it with a reduction in the front setback, it would reduce the very visible front setback, and I see no benefit to this. The requested variance along the south side will still allow for a 15-foot wide landscape buffer, which is adequate.

5. Although the stated purpose of the PEC zoning district is to ensure "buffers between incompatible uses" the combination of the existing and proposed uses are compatible, making the reduced buffers suitable in this particular location.

6. The proposed footprint of the hotel and restaurant use is a reasonable size. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).


**ORDER**

Based upon the foregoing, it is this **6<sup>th</sup> day of April 2009**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Hopkins Hospitality Investors, LLC, for variances to reduce the 30-foot rear setback to 10 feet for a retaining wall, parking spaces, trash receptacle, and storage building, and to reduce the 30-foot side structure and use setback from all other zoning districts to 6 feet for parking spaces in a PEC (Planned Employment Center) Zoning District, are hereby **GRANTED**, subject to the following conditions.

1. The variances will apply only to the retaining wall, parking spaces, trash dumpster, and storage building being requested and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.
2. The Petitioner shall install four (four)-foot chain link fencing atop the retaining wall along the Property's western boundary.
3. The Petitioner shall plant and space vegetation in the setback area to provide sufficient room for any necessary maintenance on the Petitioner's property without trespassing on APL property.
4. The Petitioner shall use modular block material to construct the retaining wall on the Property's western side.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
**Michele L. LeFaivre**



**Date Mailed:** 4/7/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.